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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,350	03/16/2004	Mark S. Nichols	7522-8	2106

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/801,350

Applicant(s)

NICHOLS, MARK S.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 31-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 31-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on Dec. 6, 2004.

### ***Claim Objections***

1. Claim 20 is objected to because of the following informalities: there are two claims numbered 20. The second of the two should be renumbered --30--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In reference to claim 1, the scope of the claim is not definite since the claim ends in a ";". Hence it is not clear if part of the claim has been omitted. Changing the ";" to a --.—would overcome this rejection. For the purposes of this Office Action, it is assumed that the subject matter recited is the intended. In reference to claim 17, line 4, " a hook having a weight coupled to the hook along the hook is indefinite since the hook is compared to itself. See claim 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7, 10,11, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins in view of McClellan.

The patents to Hawkins and McClellan show fishing lures. Hawkins shows a body 20 having at least one cavity 23, 25 in a midsection of the body and at least one opening 21 in a top surface of the body. Hawkins shows a hook 33 having a weight 31 coupled to the hook along a shank of the hook such that the hook is positioned closer to the line receiving portion 32 of the hook wherein the hook is positioned in the at least one cavity such that at least a portion of the weight contacts inner surfaces of the cavity thereby resisting the hook from being pulled from the body when the hook is pulled. The patent to McClellan shows a fishing lure having a weight 35 mounted on a fishing hook closer to the throat of the hook than the line receiving portion 28 of the hook. In reference to claim 1, it would have been obvious to provide Hawkins with a weight mounted hook as shown by McClellan to change the action of the lure in the water. In reference to claim 15, Hawkins shows an eye 32 protruding from or through a leading surface of the body. In reference to claim 16, the combination of Hawkins as modified by McClellan and Pippert shows the midpoint of the weight positioned at a mid-section of the body.

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5. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins in view of McClellan as applied to claim 1 above, and further in view of Pippert. The patents to Hawkins and McClellan show fishing lures and have been discussed above, but do not show a body saving device coupled to the base. The patent to Pippert shows a fishing lure having a body saving device 16 coupled to the base 14. In reference to claim 6, it would have been obvious to provide the fishing lure of Hawkins as modified by McClellan with a body saving device as shown by Pippert to retain the soft plastic fishing lure to the body. Pippert shows one protrusion 16, but it would have been obvious to have more than one for multiplied effect. See *In re Harza* 124 USPQ 378.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins in view of McClellan as applied to claim 1 above, and further in view of Huppert. The patents to Hawkins and McClellan show fishing lures as discussed above, but do not show a plurality of ribs extending around the body. The patent to Huppert shows a fishing lure having a plurality of ribs 61 extending around the body in Fig. 5. In reference to claim 13, it would have been obvious to provide the lure of Hawkins as modified by McClellan with a plurality of ribs as shown by Huppert to resemble a target species.

7. Claims 12, 17-22, 27, 28, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins in view of McClellan as applied to claim 1 above, and further in view of Admitted Prior Art.

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The patents to Hawkins and McClellan show fishing lures and have been discussed above. The combination shows a head and a tail, but not a plurality of legs extending from the head which is shown in Figs. 1-2 as "Prior Art". In reference to claims 12, 17, it would have been obvious to provide the lure of Hawkins as modified by McClellan with a plurality of legs as shown by the Admitted Prior Art of Figs. 1-2 for the purpose of making the lure resemble a shrimp which is a desired prey species. In reference to claim 27, McClellan discloses a lead weight.

8. Claims 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins as modified by McClellan and Admitted Prior Art as applied to claim 17 above, and further in view of Pippert.

The patents to Hawkins, Pippert, and McClellan show fishing lures and have been discussed above. The Admitted Prior Art has also been discussed above. In reference to claim 23, it would have been obvious to provide the lure of Hawkins as modified by McClellan and Admitted Prior Art with a body saving device as shown by Pippert to retain the soft plastic lure on the body as disclosed by Pippert in column 4, line 21.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Hurtle, Dugan, Nichols, Blich, Weber, Zeman, Ward, Powell, Cook, Sabol, and Wright show other fishing lures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a long, sweeping checkmark-like stroke extending from the end of the name.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR